

Moussa (Migration) [2020] AATA 1049 (22 March 2020)

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Ms Hosin Moussa

VISA APPLICANT: Mr Ramy Hanafy Essa Hussin

CASE NUMBER: 1732234

DIBP REFERENCE(S): OSF2016030552

MEMBER: C Morfuni

DATE: 22 March 2020

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Statement made 22 March 2020 at 2.45pm

1. CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – validly married in home country soon after first face-to-face meeting – financial, household and social aspects of relationship – nature of commitment – age difference – limited evidence of relationship, even given that parties live in different countries – contradictory and inconsistent evidence – evidence contrived towards migration outcome – sponsor initially stated that relationship was over – no mutual commitment to shared life from the outset – decision under review affirmed

2.

3. LEGISLATION

4. *Migration Act 1958 (Cth), ss 5F, 65, 359AA*
5. *Migration Regulations 1994 (Cth), r 1.15A(3), Schedule 2,*
cl 309.211(2)(a), 309.221

6.

7.

CASES

Garcevic v MIAC [2012] FMCA 931
He v MIBP [2017] FCAFC 206
MILGEA v Dhillon [1990] FCA 144

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

8. This is an application for review of a decision made by a delegate of the Minister for Immigration on 11 October 2017 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
9. The visa applicant referred to in this decision as *the applicant*, applied for the visa on 7 November 2016 on the basis of his relationship with the review applicant and sponsor and who is referred in this decision as *the sponsor*. Where both are referred to together in this decision, they are referred to as *the parties*.
10. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
11. The delegate refused to grant the visa on 11 October 2017 on the basis that the visa applicant did not satisfy cl.309.211 because the delegate found that the applicant did not meet the definition of spouse under s5F of the Act, specifically subclause 309.211(2)(a) at the date of application or at the date of decision.
12. The sponsor lodged an *application for review of the 309 decision* on 19 December 2017 together with a copy of the delegate's decision.
13. The Tribunal's decision is made in accordance with the President's Direction 8.2 which states:
 14. *As a general rule, where the Minister for Immigration (Minister) or delegate has made an adverse decision on particular criteria or issues, the AAT should restrict its review to those matters.*
15. At the date of the hearing, 22 January 2020, the sponsor was an Australian citizen aged 53 and the applicant was an Egyptian citizen aged 33.
16. The Tribunal received oral evidence from the sponsor (review applicant) and the visa applicant (who gave evidence by telephone) with the assistance of an interpreter fluent in the Egyptian and English languages. There were no other witnesses.
17. The Tribunal had before it the Department and Tribunal files including all documents including but not limited to written submissions together with the oral evidence provided at the hearing.
18. The review applicant advised at the hearing that her registered migration agent Mr Hany Boulous would not be attending the hearing.
19. At the commencement of her oral evidence, the sponsor stated that her relationship with the applicant was over. She expressed fear in relation to the applicant and

stated to the Tribunal that she preferred that the Tribunal would make an unfavourable outcome decision rather than she expressing that outcome herself (she expressed concern as to whether or not the applicant would become aware of the evidence given at the Tribunal). The Tribunal indicated that the applicant would receive a copy of the decision and reasons.

20. The Tribunal explained to the sponsor that if she wished she could withdraw her application for review or if she preferred, continue with the hearing. After having a short break, she reneged from her initial position and indicated that she wanted to continue with the hearing stating that the parties were still together as a couple notwithstanding that they lived in separate countries. On the basis of her request, the hearing continued.
21. In her statutory declaration dated 13 November 2016 (Df54) the sponsor stated that the parties met through a friend in January 2015 over the telephone and she then flew to Egypt on 24 January 2016 in order to meet the applicant and that they married on 4 February 2016 (Df24). In her application for sponsorship Form 40SP (Df8) at Question 21, she states that the parties married on 3 February 2016. The Tribunal notes that the marriage certificate shows the date of marriage as 3 February 2016 (Tf62). She returned to Australia on 13 April 2016. She travelled to Egypt again in 2017, returning to Australia a few months later. She stated in her written evidence that the applicant is amazing and she loves him and wants to spend the rest of her life with him, having spent three months with him.
22. In relation to the development of the relationship, the applicant stated that he was talking to his friend who was with other people which included the sponsor in 2015 and that he talked to her. They kept in touch for three months every 5 to 6 days via the Internet and then started to talk more frequently daily until November 2015 when they started a romantic relationship and she travelled to Egypt on 25 December 2016. The applicant at Question 55 of his application, form 47SP(Df17) indicates that the parties married on 3 February 2016. A copy of the Egyptian Marriage Certificate was provided to the Tribunal on 27 February 2020 indicating that the marriage took place on 3 February 2016. On the basis of the evidence before it, the Tribunal accepts that the parties married in Egypt on 3 February 2016.
23. At the hearing in oral evidence, the sponsor stated that the applicant had arranged a marriage of which she was not aware until she arrived in Cairo and that they married three days after she arrived. The applicant stated that the parties had agreed to marry prior, and that the applicant had organised the marriage.
24. Several statutory declarations in support of the relationship were provided by:
 - Therese Moussa dated 14 November 2016 (Df 63-64).
 - Antoinette Haikal dated 14 November 2016(Df65);
 - Louis Weiden dated 11 November 2016 (Df66);
 - Mohammed Said dated 13 November 2016 (Df67);

25. The applicant provided two form 888 unsworn written documents headed *statutory declaration*, the first signed and dated 15 November 2016 (Df57-59), however the attestation clause and the person before whom the documents were declared have been left blank in both cases and the second document (Df61) is in addition, undated and unsigned. They have been considered by the Tribunal as written statements, rather than as formally declared documents. The Tribunal did not attach significant weight to them.
26. The applicant stated that the parties had agreed to marry prior to her arrival in Egypt and that he had organised the marriage. The parties also submitted a record of interview dated 16 November 2016 (*the Department interview*) (Dff73-75) between the applicant and a Department officer in which the applicant indicated that he applied for a *visitor visa* rather than a spouse visa as he wanted to see the sponsor's family "...and how things would go before applying for immigration".
27. The applicant stated that he worked at a bank since October 2016 and that he had previously had a friend who is married to an Australian but he and the friend are no longer in contact. He stated in oral evidence that prior to the bank position he had been and currently was a tour guide.
28. The applicant stated that he has never previously been married and has no children but that the sponsor was previously married about 20 years ago and became divorced about 10 years ago and that she has a son and daughter. The applicant could not remember the son's name but said he is about 26 or 27 years old and a daughter who is about 24 years old who live in Melbourne. He stated that they do not contact the sponsor and if they do so, it is only rarely and they call her only if they need help. The applicant indicated that the sponsor's daughter is married, he did not know her husband's name and that she has two children Jacob and a girl whose name he could not remember. He indicated that the sponsor's son is not married, is a truck driver and lives with friends.
29. The applicant stated that sponsor's children are aware of the relationship which they did not accept at first but do so now.
30. The parties submitted third party statutory declarations in support of the relationship (Dff 57-67) including two persons who state they were witnesses to the marriage in Cairo Egypt one purporting to be the applicant's brother (Df62) unsigned, not providing a name and there was also no identification of before whom it was sworn. Another purported witness (at Df57) does not name himself as declarant, and there is no attestation clause or date to the purported declaration. Neither document gives a date of the marriage. For these reasons, the Tribunal has placed minimal weight on these documents.
31. The parties also submitted a letter photo copy referring to a Valentine gift, dated 13 February without a year reference. The Tribunal attached little weight to this document
32. Movement records indicate that the sponsor departed Australia on two occasions, the first time on 24 January 2016 returning on 13 April 2016 and the second occasion departing Australia on 18 June 2017 and returning on 2 November 2017. There are no movement records indicating that the visa applicant has ever entered

Australia. The sponsor was shown the movement records pursuant to s359AA at the hearing, s359AA having been explained to her and further advised during the opening of the hearing that any matter put to her under 359AA would entitle her to comment or ask for additional time to do so. She did not take issue with the movement records and did not request additional time to comment or respond. The movement records did not result in any adverse consequences in relation to the Tribunal's decision.

33. The wedding:

34. The applicant indicated in the Department interview on 16 November 2016 that the parties decided to marry before meeting in person. He indicated that there was a very small gathering at home in Egypt attended by his parents, sister, brother and his brother's wife (approximately nine people which he confirmed in oral evidence). He stated that the parties did not have a traditional wedding because his maternal aunt's husband passed away a week beforehand, there was not enough money to have a big party and he claimed the celebration photos were of the wedding which the delegate took to be simply a family visit. They wore casual clothes and submitted some photographs submitted to the Department which were before the Tribunal and looked like friends spending time together. In answer to questions from the Tribunal, both parties indicated that no one from the sponsor's family was involved in the wedding and that no one took a video of the wedding which could be viewed by the sponsor's family either at the time or subsequently. The evidence before the delegate, was that the applicant did not wish to make the commitment widely known amongst his community. When asked by the Tribunal about this during his oral evidence, the applicant denied it. The Tribunal did not find his evidence credible on the basis of the whole of the evidence before it.

35. When asked by the Tribunal how his relationship with the sponsor is socially recognised the applicant said that his neighbours asked about the sponsor and he told them that she was his wife and that his friends and her friends were congratulating them on Facebook. He stated that no one from the sponsor's family attended however the sponsor's sister and the sister's daughter had subsequently been added to his Facebook account. He stated that there was no wedding celebration and a small gathering with his immediate family members.

36. In oral evidence the sponsor simply spoke about the wedding ceremony itself and mentioned that the parties married in the presence of two witnesses.

37. There was no evidence independently to show that the sponsor's family have been involved in or notified of the union between the parties. The applicant claimed to have lived with the sponsor for more than two months however there did not appear to be any independent evidence that they actually resided together or that there was cohabitation, rather evidence that she stayed with his brother.

38. The third party statutory declarations filed subsequently have been outlined in paragraph 16 above and for the reasons already provided, the Tribunal has not attached a great deal of weight to them.

39. When asked what he knew about the sponsor's life in Australia at the Department the applicant said she does not work but is supported by Centrelink but did not know

how much she receives, that she goes to a psychologist whenever they call her for an appointment, that she lives in government housing which has two rooms and that she pays rent. He stated that she had planned to come to Egypt for six weeks but they married and she stayed for three months. The applicant indicated that the sponsor did not spend longer time with him because Centrelink would not support her if she was not in Australia, she had to continue to pay rent and that she lives alone.

40. The applicant stated that when in Australia the sponsor spends her days with her friends George and his wife and a woman and her daughter who are her best friends whom he did not name. She goes to the hairdresser every 20 days and speaks Arabic. The applicant stated in his written evidence that he does not speak English and only says *hi* and *how are you* to the sponsor's daughter. He stated that he took two months leave whilst the sponsor was in Egypt saying that they stayed at home in the mornings then went to restaurants or went for a walk, visited Dream Park reserve and such. In oral evidence, both parties indicated that they had outings mainly with family and sometimes with some friends of the sponsor from Australia who visited Egypt.
41. The applicant stated that the parties had been living together until 12 April 2016 and whilst he has an apartment in a particular area in Egypt, he was worried about the sponsor's safety and so she stayed with his brother. She then moved to the applicant's apartment for three days but didn't like it as she felt alone so she wanted to stay with the brother where the parties both stayed. The Tribunal considers this arrangement quite unusual. The sponsor left the apartment when the parties went to another area and stayed for one week at a resort at Sharm-el-Sheikh and other places.
42. The applicant stated that he did not consider the difference in the parties' ages a problem, The parties confirmed that the sponsor's son was five years younger than the applicant. The applicant stated that the sponsor is a good person and religious and they have a lot in common in relation to their religion. In terms of the long term, the applicant stated that he wishes to have a child but that the parties did not discuss children, the applicant stating that *"having children is a religious issue and that morals are the most important thing"*.
43. At the hearing, the oral evidence indicated that the applicant and the sponsor had discussed the matter of children and that the sponsor had indicated that she was able to bear children. In her oral evidence, the sponsor stated to the Tribunal, that whilst she was able to bear children, she did not want to have any more children. Whilst the applicant stated that the difference in the parties' ages was not an issue to him however the sponsor indicated that the difference in their ages did trouble her. In relation to the issues of children and age difference, the Tribunal preferred the evidence of the sponsor which in its view, was more credible and consistent in the context of the whole of the evidence before the Tribunal.
44. The applicant stated that the sponsor only goes to church on funerals or events. He added that the sponsor has a black car and keeps his photo in her room and he does the same in relation to her, that she attended his birthday then departed for Australia and was coming back in April 2017. He stated that he has a new job and could not leave Egypt for six months. There was no independent evidence provided in relation

to this assertion. Although the sponsor had intended to go to Lebanon she did not go. When asked how they communicate the applicant stated, *on Viber several times a day*.

45. The sponsor stated that the applicant has not sent her any money but sent her an iPhone that she did not use after she returned to Australia. She stated that they do not have any assets such as property and that in Egypt the applicant wanted to get her a credit card but could not do so as she was a foreigner. The evidence indicates that the applicant alone opened a joint bank account in Egypt in relation to the parties and the oral evidence at the hearing indicated that they kept their finances separate and had separate bank accounts.
46. When asked by the Tribunal why he opened the joint account in Egypt the applicant indicated that it was so that the sponsor would have access to money when she was there. When the Tribunal asked why she could not have asked him for money while she was in Egypt rather than him open a joint bank account he indicated that it was easier to have the joint bank account but provided no other reason. The sponsor however, stated in oral evidence at the hearing that the applicant had opened the joint bank account for migration purposes on the basis that it would assist him to obtain his Visa. The Tribunal asked him directly at the hearing, whether or not a positive migration outcome was his motive which he denied. The Tribunal did not find the applicant's explanation plausible and found the evidence of the sponsor more credible in the light of the whole of the evidence before the Tribunal.
47. The parties had not provided evidence to the delegate, that they pool their finances and the delegate basically refused the application indicating that the delegate was not satisfied that there was a genuine and ongoing relationship to the exclusion of others between the parties based on the findings in relation to the matters in r1.15A(3).
48. The Tribunal had before it a letter dated 5 March 2018 (Tf5) addressed to "To whom it may concern" from Positive Self Psychology Services signed by a treating psychologist for the sponsor (Tf5) which the Tribunal has considered. The psychologist stated that the sponsor needs support in relation to depression, anxiety, grief and loss issues as well as she and her applicant husband being able to start a life as a couple. She had been referred by her treating doctor on 17 November 2017 in relation to depression, stress and anxiety and was continuing to experience various hardship due to the original application being rejected and indicating that the parties continue to feel powerless and their lives on standby due to ongoing unresolved issues including the Visa application. He describes the *various treatments which have been available to treat the sponsor's symptoms including reassurance/validation that her symptoms were normal and expected after such issues and can be improved and managed with both time and treatment*. He states that the *ongoing symptoms being due to the unresolved issue which is affecting all aspects of her life personally and professionally*. The psychologist's letter indicates *that he is of the view that the review should be heard early on the basis of very serious compassion and compelling reasons which is extremely important and urgent and would greatly assist the sponsor in relation to the complex number of such symptoms which are being experienced and that her husband being in Australia on a permanent basis would drastically improve her psychological emotional personal and physical well-being*. The report states that the sponsor is not in a

position to relocate overseas as she has her ageing mother, children and grandchildren in Australia. There was nothing to indicate that she would not positively respond to treatment if she sought it.

49. The sponsor did not mention these issues in oral evidence. The Tribunal has considered the contents of the letter together with the fact that the sponsor did not detail these issues at the hearing.
50. Whilst understanding that the Visa process is difficult and stressful for many applicants and sponsors including in the present case, in the light of the whole of the evidence including the sponsor's oral evidence, the Tribunal finds that the letter at that time was sought from the psychologist for a positive migration outcome and did not consider that it had probative value other than to highlight the anxiety and stress which faces the sponsor as it does other parties before the Tribunal when they are awaiting a visa outcome and understands that the resolution of a matter in those cases is important. There was nothing in the letter that indicated that the sponsor would not respond to treatment as outlined in the letter.
51. Given that at the hearing, the sponsor stated that the relationship with the applicant was over and after a short break, came back and said it was still ongoing, and that two years have passed since the psychologist's correspondence and no update has been provided at the date of decision, the Tribunal does not give it significant weight.
52. The parties submitted a 1 page letter on letterhead from a Federal Member dated 31 January 2018 (Tf6) (*the MP's letter*) which, as presented to the Tribunal is unsigned and written to the then Minister for Home Affairs and Immigration and Border Protection citing an administrative error which occurred in the case which is canvassed in more detail below where the First Secretary's response in relation to that letter is set out in paragraphs 44 and 46 below. The Tribunal also concludes on the whole of the evidence before it, that The MP's letter is based on information provided to him and there is no indication that he has ever met or knows anything about the parties relationship and where he cites the Department's mistake regarding mislaid evidence. There is no signature on the page provided to the Tribunal and the Tribunal concludes that the letter was sought from him as support by the parties for the purpose of wanting a positive migration outcome.
53. The evidence indicates that in approximately 2017, the Department misfiled some documents forwarded to it by the parties. The first Secretary in Egypt apologised for the accidental mistake, subsequently met with the parties and the mislaid evidence was returned personally to the sponsor on 26 October 2017 when she and the applicant met with the First Secretary. First Sec's letter dated 29 October 2017 that the sponsor wished to return to Australia to seek merits review rather than have the Department reconsider the matter on the basis that the original evidence had been retrieved (Tf12 & 25). The applicant responded to the First Secretary on 19 November 2017 accusing the Department of a number of matters including but not limited to negligence, concealing evidence, hiding evidence, carelessness, lack of service and specifically declining the First Secretary's apology.
54. The Tribunal understands the frustration and disappointment expressed in the applicant's email dated 19 November 2017 but considers that there was a genuine error in misfiling made in the Department and in the light of the First Secretary's

admission and apology (Tff 22-23) considers that on the evidence before it, that there does not appear that any deliberate hiding and/or concealment of evidence or negative motive by the Department as alleged but that there was a mistake made and that the missing evidence was returned to the sponsor personally as indicated above.

55. On the same day, 19 November 2019, the applicant's representative sent a letter to the Tribunal indicating that his firm had inadvertently uploaded documents of another client of the firm by mistake into the current case before the Tribunal and forwarding the documents to the Tribunal, setting out those documents and requesting that the Tribunal disregard them. He also apologised for his error. Tribunal accepts and understands the applicant's representative's email sent on 19 November 2019 to the Tribunal apologising for having uploaded documents relating to another file and forwarding them to the Tribunal effectively in error and that it was a genuine mistake.
56. The Tribunal concludes that both of these incidents and the apologies provided of the First Secretary and of the applicant's representative in this case are genuine. The Tribunal considers that they indicate that from time to time inadvertent errors may be made. These two issues have had no adverse bearing on the outcome of the Tribunal's decision.
57. A Tribunal officer file note dated 6 July 2018 indicates that she spoke to the sponsor responding to her query in relation to when she could provide information to the Tribunal, stating that she may provide evidence and submit it directly to the Tribunal at any time (Tf14).
58. The parties provided bank documents, a psychologist's letter, and other written evidence which the Tribunal has considered. The Tribunal has also has before it documents including various identity documents, educational qualifications of the applicant, the marriage certificate which was provided after the hearing (Tf62) and has taken all documentation including submissions and oral evidence before it into account in making its decision.
59. On 10 September 2019 the Tribunal wrote to the Representative and the sponsor in relation to a priority request (which had been sent to the Tribunal on the basis of medical advice not to travel – written 9 months earlier on 31 December 2018), dated 10 September 2019 (Tf30), requesting that she provide current information supporting her claim in relation to compelling reasons. There was no further information provided in response to the Tribunal's request. The Tribunal has as previously indicated, that it has considered the psychologist letter referred to in paragraph 39 above.
60. On 4 November 2019 the Tribunal forwarded two letters, one to the representative and the other to the review applicant relating to invitation to attend a hearing on 3 December 2019 together with a response to the hearing invitation and a request to provide a telephone number for the applicant should the applicant wish to give evidence at the hearing from overseas and requesting that any additional documents or information that the sponsor (review applicant) may wish to rely on during the hearing be provided to the Tribunal by 26 November 2019. The Tribunal was subsequently contacted and a request made that the hearing be postponed to a later time of day on the same date to which the member acceded.

61. As at 28 November 2019, a hearing response document had not been received by the Tribunal nor was additional evidence provided. On 3 December 2019 the Tribunal forwarded two letters to the representative indicating that the matter had been relisted for 22 January 2020 providing details and attaching a response document to the resumption of an adjourned hearing notice (Tff45-46) which was not completed. The hearing resumed on the relisted date.
62. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

63. The issue in the present case is whether at the date of this decision the parties were in a spouse relationship as defined in section 5F of the Act at the date of application and if so, continue to be so at the date of this decision.

Whether the parties are in a spouse or de facto relationship

64. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
65. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered (*He v MIBP* [2017] FCAFC 206).

Are the parties validly married?

66. Tribunal finds that the parties were validly married on 3 February 2016 in Egypt under a marriage that is recognised in Australia and is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

67. **Regulation 1.15A (3)**

(a) The financial aspects of the relationship – including joint ownership of assets; joint liabilities; extent of pooling of financial resources; any legal obligations owed to the other party; any sharing of day-to-day household expenses.

- On the evidence provided, the Tribunal finds that the parties have a joint bank account in Egypt. There is no evidence of other joint assets and the Tribunal finds that the parties do not satisfy the requirement of joint ownership of assets attaching little weight to the joint account in Egypt which it concludes was opened purely for migration purposes;
- The applicant sent the sponsor an iphone which she did not use.
- Other than as required by law between a married couple, given that the parties live in different countries the Tribunal does not attach great significance to the other financial aspects of the relationship including joint liabilities, the pooling of financial resources and the sharing of day-to-day household expenses, legal obligations owed to the other party as they live in different countries.
- The Tribunal has considered and finds that it does not place significant weight on these aspects at the date of application.

(b) The nature of the household – including any joint responsibility for care and support of children; parties' living arrangements; and any sharing of housework.

- The parties do not have children of their relationship and thus do not have any joint responsibility for the care and support of children.
- The parties live in different countries, the Tribunal accepts that they could not be expected to have living arrangements consistent with the usual living arrangements of a married couple who reside closer together. Nevertheless, even in Egypt over the few months that the sponsor was there, the Tribunal has already indicated that it finds it highly unusual that the sponsor stayed with the applicant's brother rather than with her husband, the applicant and it did not accept the reasons provided. It has considered and finds that it does not place significant weight on this aspect at the date of application.

(c) The social aspects of the relationship including - whether the persons represent themselves to other people as being married to each other; the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities.

- The parties live in different countries and the sponsor has travelled twice to Egypt for relatively short periods where they undertook some outings together and some with friends. The Tribunal accepts that in Egypt, the parties represent themselves to some people as being married to each other.
- The Tribunal has already indicated that it attaches little weight to the third-party documents such as the statutory declarations or purported statutory declarations in support of the relationship which appear in paragraph 16 above. In relation to the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities, based on the whole of the evidence before it, the Tribunal does not find that these criteria are met by the applicant.

(d) The nature of the persons' commitment to each other – including the duration of the relationship; the length of time they have lived together; degree of companionship and emotional support they draw from each other; and whether they see the relationship as long-term.

- The parties claim to have met in 2015 and married in 2016 nine days after they met and lived together for three months in Egypt until the sponsor was made aware by Centrelink that she needed to be back in Australia otherwise her benefits would be in jeopardy. The duration of the report the relationship is approximately at a maximum (given that the sponsor indicated at the hearing that the relationship is over), just over four years.
- The evidence also indicates that the sponsor visited Egypt in December 2016 for three months but lived essentially with sponsor's brother during that time except for very short periods having spent time living with him Rather than the applicant during the time that she was in Egypt. The Tribunal did not accept the explanations for this provided by the applicant and is unable, on the evidence to find that that was time spent living with the applicant.
- The Tribunal does not consider that there is evidence which indicates the degree of companionship and emotional support that the parties draw from each other and whether they see the relationship as long-term given their differing views in relation to their age difference and having children they did not articulate any other long-term plans. The Tribunal finds that none of these criteria are satisfied.

68. In summary, on the basis of the whole of the evidence before it, the Tribunal has a number of concerns which have arisen as a result of the written and oral evidence provided which may be summarised as follows:

- the sponsor gave sworn evidence at the commencement of the hearing for review that the parties were no longer in a relationship. Once she decided to continue with the hearing, she reneged on her statement that the parties were no longer in a relationship. The Tribunal did not believe her. On the basis of the whole of the evidence before it, it is accepted by the Tribunal that the relationship was at an end.
- The applicant indicated that the age difference of 20 years age between the parties is not an issue, and the sponsor indicating in oral evidence that the age difference is a matter which concerns her.
- The parties decided to marry before meeting in person, meeting in person on 25 January 2016 and marrying nine days later with the sponsor finding out that the applicant had organised a wedding which she had not realised. The photographs of the wedding show them in casual clothes and there was little or no involvement of the sponsor's family on any level including electronic.
- The documents by third persons in support of the relationship appear to have been designed to contrive a positive migration outcome (in relation to motive see paragraph 58 above).
- In relation to the wedding:
 - how the parties met and married within a few days of meeting, and the discrepancy between their evidence and the arrangements made for the wedding by the applicant and the wedding arrangements as previously outlined;
 - the applicant stated that no one from the sponsor's family attended however the sponsor's sister and the sister's daughter had been added to his Facebook account later. The Tribunal finds this of little probative value and finds it to be contrived towards a positive migration outcome.
 - there was little evidence to show the sponsor's family were involved in the wedding or notified of the union between the parties.
 - The unreliability of the third-party evidence. A number of documents were submitted with day and month but no year. e.g. the photocopy of a Valentine gift dated 13 February (no year) and the "statutory declarations" provided by the witnesses to the wedding some not naming the deponents or the person's before whom the document was purportedly sworn, matters which have been previously mentioned in this decision.
- in the Department interview on 16 November 2016 (Tf73-75), the applicant stated that he applied for a visitor Visa rather than a spouse visa because *he*

wanted to see her family and to see how things would go before applying for migration, he did not know the sponsor's married daughters husband's name and although the daughter had two children, he could not remember the sponsor's granddaughter's name nor was the applicant able to name the woman and her daughter who he stated are the sponsor's best friends indicating to the Tribunal the applicant's lack of knowledge and contact in relation to the sponsor's family, the applicant's lack of knowledge of the extent of the sponsor's life in Australia, given the evidence as to the frequency with which the parties communicated on Viber. The Tribunal was ultimately concerned that there was not a genuine commitment to the relationship on his part other than for migration purposes.

- the fact that the sponsor spent much time living with the applicant's brother rather than the applicant during the time that she was in Egypt- the sponsor travelled to Egypt on 24 January 2016 and stayed for three months returning on 13 April 2016 on the basis that Centrelink would stop her payments if she did not return to Australia. She lived much of the time in Egypt, with the visa applicant's brother both parties providing the reason, that she did not feel safe. Given that she was married to the applicant, it was not clear as to why she felt safer living with the husband's brother than with her husband. The applicant's explanations were not accepted as credible, by the Tribunal.
- as previously indicated, the applicant applied for the partner Visa on 7 November 2016 based on his relationship with the sponsor. At his Department interview on 16 November 2016 supplied by the parties, he indicated that he was applying for a visitor visa rather than a spouse visa as he wanted to see the sponsor's family and "*how things would go before applying for immigration*". This comment, in the Tribunal's view, supports the proposition that the partner application was made purely for migration purposes;
- the 20 year age difference between the parties, the female sponsor being 20 years older than the male applicant (who stated that he wants to have children). The Tribunal further notes, that the sponsor has children and grandchildren and as previously mentioned, her oldest son being 5 years younger than the visa applicant;
- the applicant's evidence indicating his desire to have children but stating that he and the sponsor had not discussed the matter and the sponsor categorically stating in oral evidence that she did not wish to have any more children. The Tribunal finds, that it would be highly unlikely that a couple who are genuine and dedicated to spend their lives together, would not have discussed the matter of children specifically if one of them wanted to have children and the other did not. The Tribunal accepted sponsor's evidence is more credible than that of the applicant.
- a psychologist's letter dated 5 March 2018 referring to and mentioned above the sponsor's depression, stress and anxiety relating to the Visa process addressing matters as being "*very serious compassion and compelling reasons*" and that the sponsor is not in a position to relocate overseas as she has her ageing mother, children and grandchildren in Australia. The document was ostensibly written and produced in relation to a request to the Tribunal for

a priority hearing on the ground of compelling reasons. As previously indicated, the Tribunal concludes that this document was requested and sought by the parties, in order to provide the basis of a positive migration outcome and has placed little reliance upon it. As the psychologist indicated that the applicant would be responsive to treatment but there is no updated evidence at the hearing before the Tribunal as the Tribunal had requested.

- whilst the Tribunal accepts that couples may feel sad, anxious and often depressed during the Visa process, in the Tribunal's view, as previously outlined, the psychologist has also taken on an advocacy role on behalf of the sponsor in relation to the immigration issue (for which the sponsor had a migration agent representative) (Tf5). In any event, the sponsor did not allude to any of these matters in her oral evidence before the Tribunal and as previously indicated, the Tribunal has accepted her opening comments that the parties are no longer in a relationship, she indicating that she was continuing with the hearing in the Tribunal concluding on the whole of the evidence, that she did not want to take responsibility for an adverse outcome apparently fearful of the reaction she might receive from the applicant.
- given that the parties live in different countries, the Tribunal would not expect that at the date of decision, they are able to comply in the usual sense with all of the Regulation 1.15A (3) matters which the Tribunal must consider such as run a household, own joint assets or have joint liabilities, pool their resources, and socialise in the conventional sense as a couple. The Tribunal draws no adverse inferences from that. It would however expect to have before it not only evidence of regular personal contact between the parties and their respective families, but evidence of genuine mutual commitment and emotional support of each other over and above simply declaring that they love each other and wish to be together forever.
- the Tribunal is further not satisfied as to the parties' commitment in the long term other than for a positive migration outcome.

69. On the basis of the whole of the evidence, the Tribunal does not find that there was from the outset, a mutual commitment to a shared life to the exclusion of others or a genuine and continuing relationship between the parties, or that they live together and not separately and apart on a permanent basis. It further concludes and finds that much of the evidence has been contrived from the beginning, for a positive migration outcome. The Tribunal accepts that migration as a motive, does not mean disqualification from obtaining a Visa (*Milgea v Dhillon* [1990]FCA 144; *Garcevic v MIAC* [2012 FMCA 931]). Nevertheless, motivation is a matter which can be taken into account and considered by the Tribunal and has been in this case. In the Tribunal's assessment, it has ramifications as to whether or not it is satisfied in relation to the genuineness and degree of the parties' mutual commitment. In this case, it is not so satisfied. The Tribunal accepts the sponsor's evidence given at the beginning of the hearing, that the parties are no longer in a relationship and does not accept, that she was genuine when she reneged later by saying that they still were in a relationship. The Tribunal concluded based on the whole of the evidence, that the sponsor was fearful of the ramifications of taking responsibility for expressing views which could be the basis of a negative outcome of the decision which may upset the applicant.

70. Where the oral evidence differed between the applicant and the sponsor, on the grounds of credibility, the Tribunal accepted the sponsor's evidence in preference to that of the applicant.
71. The Tribunal concluded that the applicant was not in the necessary relationship with the sponsor at the time of application (and therefore does not meet cl.309.211(2)). It considered whether he meets the alternative criterion in cl.309.211(3) which it finds on whole of the evidence before it that he does not.
72. On the basis of the above, the Tribunal is not satisfied that the requirements of s.5F(2)(b)-(d) inclusive are met at the time the visa application was made or at the time of this decision.
73. Therefore the visa applicant does not meet the requirements of cl.309.211 at the date of application and cl.309.221 at the date of this decision.
74. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

75. The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

C Morfuni
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).